



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 367-99
18 January 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 24 January 1996, after you were heard to make homicidal threats, your command requested that you undergo psychiatric evaluation. After being advised of your rights under the "Boxer Law", you were referred for evaluation. You were found to have an occupational problem, and avoidant personality traits not constituting a personality disorder. You were returned to full duty, and considered physically qualified and aeronautically adaptable. You presented at the aviation medicine clinic on 29 July 1998, with "work-related concerns." Given your prior history of psychological evaluation, the flight surgeon indicated he would refer you for a repeat psychological evaluation. On 4 September 1998, Lt S..., a clinical psychologist, gave you diagnoses of occupational problems and personality disorder not otherwise specified, with cluster A and B traits. According to his report, you initially claimed that the evaluation had been command directed.; however, after being informed by Lt. S... that the evaluation was not command directed and that you would be seen only if you requested an evaluation on a voluntary basis you indicated that you wanted to go ahead with the evaluation. You underwent a psychiatric evaluation on 22-24 September 1998, after being advised of your "Boxer Law" rights. A

Navy psychiatrist gave you a diagnosis of personality disorder, not otherwise specified, with passive aggressive, obsessive-compulsive, narcissistic, and immature features, of moderate severity.

The Board did not accept your contention to the effect that Lt. S... falsified the 4 September 1998 report of psychological evaluation as it pertained to the voluntary nature of the evaluation, as it was not considered credible. The Board concluded that even if events occurred as you contend they did, no relief would be warranted. In this regard, it noted that although SECNAVINST 6320.24, then in effect, provided that disciplinary action would be initiated against personnel who violated its terms, it did not provide for the expunction of information obtained in derogation of a member's rights under the regulation. In addition, it noted that as you had been advised of your rights under the "Boxer Law" on a previous occasion, you were aware of those rights and could have terminated the evaluation process at any time had you wanted to do so. It rejected your contention to the effect that the results of the 22-24 September 1998 evaluation should be expunged from your record because it was derivative of an unwarned, 4 September 1998 evaluation.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director